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Emily B Caudill REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Natural Resources

3 Division of Forestry

4 (Amendment)

5 402 KAR 3:010. Timber sales.

6 RELATES TO: KRS 149.010, 149.020

7 STATUTORY AUTHORITY: KRS 149.010, 149.020

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.020 authorizes the cabinet to  
9 receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or  
10 lease those lands and may sell timber or other forest products thereon. This administrative regulation  
11 establishes the requirements of major and minor timber sales.

12 Section 1. Definitions. (1) "Director" means the director of the Division of Forestry.

13 (2) "Major timber sales" means sales of merchantable timber with a return of \$25,000 or  
14 more in cash receipts to the Division of Forestry.

15 (3) "Minor timber sales" means sales of merchantable timber with a return of less than  
16 \$25,000 in cash receipts to the Division of Forestry.

17 Section 2. Major Timber Sales from State Forests. Timber may be harvested from a state  
18 forest for sale pursuant to KRS 149.020 [~~and shall comply with Major Timber Sales on state forest~~  
19 ~~property, Forestry Guideline Memorandum 14-01~~]. Major timber sales shall be conducted in  
20 accordance with the requirements of this section.

21 (1) Advertisement.

1 (a) The Division of Forestry shall mail a timber sale packet to each prospective buyer a  
2 minimum of three (3) weeks before bid opening. The sale shall be advertised at least one (1) time in  
3 three (3) local newspapers or three times (3) in one (1) local newspaper.

4 (b) A timber sale packet shall be prepared for each sale and shall include a:

- 5 1. Timber Sale Prospectus, including pertinent details of the sale;
- 6 2. ~~Form SF-4,~~ Bid for advertised timber;
- 7 3. Summary of Timber Marked if the trees are individually designated, or a Cruise Summary  
8 if it is a boundary sale;
- 9 4. ~~Form SF-3,~~ Timber Sale Contract;
- 10 5. Map of the sale area; and
- 11 6. Self-addressed sealed bid envelope.

12 (2) Contract.

13 (a) Timber shall be sold by written timber sales contract. The terms shall be adequate in the  
14 judgment of the director to protect the interests of the Commonwealth.

- 15 1. The timber sale contract shall be awarded immediately after bid opening.
- 16 2. Full payment for the timber sold shall be submitted within five (5) working days of  
17 awarding the contract.

18 (b) A certified check, made payable to Kentucky State Treasurer in an amount not less than  
19 \$2,500 or more than ten (10) percent of the established minimum bid, shall be required as a sign of  
20 good faith to accompany each bid.

- 21 1. The bid shall be considered as part of the total sale price of the successful bidder.
- 22 2. Deposits of unsuccessful bidders shall be returned.

1 (c) As a guarantee of the performance of the terms of the contract, the successful bidder shall,  
2 within five (5) days of the date of the contract, deposit with the Division of Forestry a certified check  
3 as performance bond in the amount of not more than ten (10) percent of the established minimum  
4 bid, but not less than \$2,500.

5 1. In lieu of the posting of the certified check as a performance bond, the successful bidder  
6 may post a surety bond with surety satisfactory to the Division of Forestry.

7 2. The bond shall be held until the completion of the terms of the contract.

8 (3) Compliance.

9 (a) The timber purchaser shall be required to comply with all timber sale contract  
10 requirements.

11 1. During ongoing harvesting activities, the operation shall be inspected by the local state  
12 forest administrator at least once every two (2) weeks to access compliance and to be available to  
13 answer any questions the purchaser may have.

14 2. If the purchaser is found in non-compliance with the contract, then the purchaser shall be  
15 informed and told what corrective measures shall be taken.

16 (b) The timber purchaser shall be required to maintain compliance with best management  
17 practices pursuant to 402 KAR 3:030.

18 (c) If the purchaser fails or refuses to comply with the direction given by the state forest  
19 administrator, then the operation shall be suspended or terminated in accordance with the timber sale  
20 contract.

21 (d) [(e)] Upon satisfactory completion of all terms of the contract and payment of any  
22 damages incurred, the Division of Forestry shall release the purchaser's performance bond.

1 (4) Minimum Bid. A minimum acceptable bid shall be determined for each sale and shall be  
2 stated as a part of the timber sale packet advertisement.

3 (a) A guide for determining the minimum bid shall be calculated by indexing the current  
4 price of No. 1 common lumber for each species, multiplying by the general profit or risk percentage  
5 and commission for industry in the particular area of the sale, and subtracting average logging,  
6 milling and drying cost.

7 (b) The price of No. 2 common lumber may be substituted for No. 1 common lumber on low  
8 quality species.

9 (c) The director may adjust the minimum bid established in subsection (4) of this section, as  
10 necessary, based on the director's professional knowledge, general market conditions in the local  
11 area, and the special characteristic of the individual sale

12 [~~This calculation may be altered in accordance with direction given in the Major Timber~~  
13 ~~Sales on state forest property, Forestry Guideline Memorandum 14-01~~].

14 (5) Negotiated Sale. If bids are not received on an advertised tract of timber, the Division of  
15 Forestry, with the approval of the director, may negotiate the sale of the tract of timber if it is judged  
16 in the best interest of the Division of Forestry and the Commonwealth.

17 (a) Negotiated sales shall be for no less than the minimum bid.

18 (b) The contract shall be executed within six (6) months of the bid opening date.

19 Section 3. Minor Timber Sales from State Forests. (1) Timber may be harvested from a state  
20 forest for sale pursuant to KRS 149.020 [~~and Minor Timber Sales on state forest property, Forestry~~  
21 ~~Guideline Memorandum 14-02~~]. Minor timber sales shall require:

22 (a) A performance bond of \$500 or five (5) percent of the winning bid amount, whichever is  
23 greater; [~~and~~]

(b) Full payment for products and performance bonds, if necessary, to be made within five (5) working days of execution of the permit; and

(c) The timber purchaser to maintain compliance with best management practices pursuant to 402 KAR 3:030.

(2) A potential buyer [buyers] for minor timber sales shall notify the division [~~submit Form SF-2, Timber Sale Permit,~~] and the sales shall be carried out under the supervision of the Division of Forestry.

(3) If time is insufficient, harvest or salvage operations in preparation for land use change as approved by the director of the Division of Forestry may exceed the \$25,000 maximum limitation.

~~[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Major Timber Sales on state forest property", Forestry Guideline Memorandum 14-01, July 24, 2014;~~

~~(b) "Minor Timber Sales on state forest property", Forestry Guideline Memorandum 14-02, July 24, 2014;~~

~~(c) "Free removal of Forest Products on state forests", Forestry Guideline Memorandum 14-03, July 24, 2014;~~

~~(d) "Rural Community Fire Protection", Forestry Guideline Memorandum 14-04, August 4, 2014;~~

~~(e) "Timber Sale Permit", SF-2, November 2009;~~

~~(f) "Timber Sale Contract", SF-3, November 2009; and~~

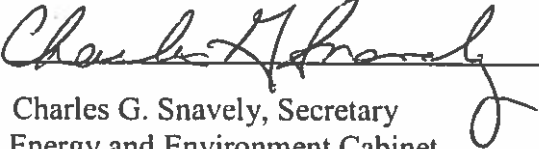
~~(g) "Bid for Advertised Timber", SF-4, November 2009.~~

1        ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law,~~  
2        ~~at the Kentucky Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday~~  
3        ~~through Friday, 8 a.m. to 4:30 p.m.]~~

402 KAR 3:010 approved for filing.  
Pages (1-6)

8/14/2017

Date

  
Charles G. Snavely, Secretary  
Energy and Environment Cabinet

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on September 21, 2017 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by September 14, 2017, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2017. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email [Michael.Mullins@ky.gov](mailto:Michael.Mullins@ky.gov).



## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation No.: 402 KAR 3:010  
Contact Person: Michael Mullins

Contact number: (502) 782-6720  
Email: michael.mullins@ky.gov

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the requirements of major and minor timber sales.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to provide information on bid procedures to individuals interested in harvesting timber on state properties.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation provides details on the process to follow when harvesting timber on state property.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This administrative regulation assists in the administration of the statutes by providing information on major and minor timber sales from state owned properties.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: This amendment removes the material incorporated by reference. The information will be captured by the bid preparation materials and timber sale contract required for both major and minor timber sales.
  - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove the forms incorporated by reference and will provide more flexibility not only to the buyer but also to the cabinet.
  - (c) How the amendment conforms to the content of the authorizing statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. This amendment will remove the requirement for the individual interested in buying the timber to fill out division forms prior to bidding on timber from state lands.

- (d) How the amendment will assist in the effective administration of the statutes: KRS 149.020 authorizes the cabinet to receive by donation, purchase, or lease lands, for forestry purposes, and may convey, exchange, or lease those lands and may sell timber or other forest products. The amendment will remove the unnecessary step of requiring the bidder to fill out forms as part of the timber sale packet.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact 10 state forests and 1,567 loggers who could bid on these harvesting operations.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed above will not be required to fill out forms as part of the timber sale packet.
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a minor cost savings to the proposed bidder. The bidder will no longer be required to fill out forms as part of their bid packet.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Logging operators will benefit by not being required to fill out forms in the timber sales packet.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially: These amendments will not increase the costs of the agency to implement.
  - (b) On a continuing basis: These amendments will not increase the costs of the agency on a continuing basis.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of general funds and restricted funds will be used.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will not be a need to increase fees or funding related to the proposed amendments.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendments to this administrative regulation do not increase or establish any fees.

- (9) **TIERING:** Is tiering applied? (Explain why or why not) No. All entities that harvest timber within the Commonwealth are required to follow these standards.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 402 KAR 3:010  
Phone: (502) 782-6720,

Contact Person: Michael Mullins,  
email: michael.mullins@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Forestry.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 149.344.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This new administrative regulation will not generate any new revenue for the state or local government.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This new administrative regulation will not generate revenue in subsequent years.
  - (c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.
  - (d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA